IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9091 OF 2004

Dinkar L. Rote..... ..... Petitioner.

Versus

Harishchandra Narayan Mudgan
& others..... ..... Respondents.

Mr. P.N.Joshi for the Petitioner.

None for the Respondents.

CORAM : S. C.DHARMADHIKARI, J.

DATED : 20TH DECEMBER, 2004.

P.C.:

Heard Shri Joshi, learned Counsel appearing for the Petitioner. Perused the impugned order.

2. It is the contention of Shri Joshi, learned Counsel appearing for the Petitioner, that the trial Court had decreed the suit of the Respondent landlord on the ground of permanent construction. The trial Court had specifically considered the issue of bonafide and reasonable requirement but refused to grant a decree for possession on that ground. He invites my attention to the finding of the trial court

in that behalf.

3. The Petitioner appealed to the lower appellate court and the lower appellate court has specifically observed that the decree of the trial Court on the ground of permanent construction is erroneous.

4. In exercise of its appellate jurisdiction, therefore, the lower appellate court quashed and set aside the decree on this ground. However, the lower appellate court was in error in granting the Respondent landlord’s cross objections and decreeing the suit for possession filed by him on the ground of bonafide and reasonable requirement.

5. Shri Joshi, learned Counsel for the Petitioner, was at to point out that the lower appellate court ought to have considered the materials which are placed on record more particularly deposition of P.W.2. It appears very clearly from this deposition as well as other material that the landlord who is owner of 17 rooms has let out every single tenement / room to tenants, apart from his own married daughter. Besides this, the landlord has expired and his widow and married daughter and son-in-law desire occupation of the suit room, which is adjacent to the room in

their occupation. Considering that the landlord has been letting out rooms after they were vacated by tenants, the need could hardly be said to be genuine much less bonafide is the submission.

6. I am unable to accept these contentions for obvious reasons. The lower appellate Court has, apart from the fact that Petitioner himself has premises of his own in the same area, adverted to all materials and held that the present premises of the landlord are inadequate for residence. In one room admeasuring 10’ x 8’ the family members were residing and now one daughter and son-in-law along with his family has to reside with the widow. Naturally, the adjacent room, therefore, is necessary for occupation. The impugned judgment in paras 12 and 13 considers the matter in entirety and records a finding of fact that the landlord’s need is reasonable and bonafide. In my view, the finding of fact as recorded is not perverse or vitiated by any error otherwise so as to call for interference in the exercise of jurisdiction under Article 227 of the Constitution of India. Petition is, accordingly, dismissed.

7. At this stage, Shri Joshi, learned Counsel for the Petitioner, prays for time to vacate. On the

Petitioner executing an undertaking within a period of four weeks in this court that he as well as his family members are in use and occupation of the premises and that the said premises would not be alienated or the possession parted with in any manner and that the rent in respect thereof would be continued to be paid till the physical possession is delivered to the landlord, the Decree for possession not to be executed for a period of six months from today. Needless to observe that on failure to furnish the undertaking, the Landlord would be at liberty to execute and enforce the Decree in accordance with law.

Sd/-

(S. C. DHARMADHIKARI,J.)